



October 30, 2000

Mr. Art Provenghi
General Counsel
El Paso County Juvenile Probation Department
6400 Delta Drive
El Paso, Texas 79905

Dear Mr. Provenghi:

Enclosed please find a copy of ID# 140798 (OR2000-4159). The original document sent to you inadvertently was not printed on letterhead. We apologize for any inconvenience this oversight may have caused.

Sincerely,

A handwritten signature in cursive script that reads "Shelley Grounds".

Shelley Grounds
Secretary to:
Yen-Ha Le
Assistant Attorney General
Open Records Division

Ref: ID#s 140798

Encl: OR2000-3159

cc: Mr. David P. Lindsey
Attorney at Law
1823 Tom Bolt Drive
El Paso, Texas 79936
(w/enclosure)



October 26, 2000

Mr. Art Provenghi
General Counsel
El Paso County Juvenile Probation Department
6400 Delta Drive
El Paso, Texas 79905

OR2000-4159

Dear Mr. Provenghi:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 140798.

The El Paso County Juvenile Probation Department (the "department") received a request for a copy of the department's file relating to a named juvenile. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 58.005(a) provides, in pertinent part:

(a) Information obtained for the purpose of diagnosis, examination, evaluation, or treatment or for making a referral for treatment of a child by a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court may be disclosed only to:

....

(3) an attorney for the child[.]

The minor at issue is represented by the requestor, who was hired by the minor's mother to be his attorney. Therefore, the department must disclose the information enumerated in section 58.005(a) to the requestor, an attorney for the child. *Id.* § 58.005(a)(3). The department contends that section 58.005(a)(3) only provides for inspection of the records,

not copies of the information. We disagree. Section 58.005(a)(3) provides for disclosure of the information. Disclosure means inspection as well as obtaining copies of the information.

In addition, section 58.007(b) of the Family Code provides, in pertinent part:

Except as provided by Article 15.27, Code of Criminal Procedure, the records and files of a juvenile court, a clerk of court, a *juvenile probation department*, or a prosecuting attorney relating to a child who is a party to a proceeding under this title are open to inspection only by:

....

(3) an attorney for a party to the proceeding[.]

The department states, "the requestor in this situation is the child's attorney requesting a copy for purposes of the pending juvenile court proceedings." However, the requestor refutes the department's statement and states that the request is not made for the purpose of a pending juvenile court proceeding. We cannot resolve disputes of fact in the open records process. Open Records Decision Nos. 554 (1990), 552 (1990). Thus, if the requestor falls under the purview of section 58.007(b)(3), then the department must allow the requestor to inspect the juvenile's records. If the requestor does not fall under the purview of section 58.007(b)(3), then the information is confidential under section 58.007(b).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental

body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/ljp

Ref: ID# 140798

Encl. Submitted documents

cc: Mr. David P. Lindsey
Attorney at Law
1823 Tom Bolt Drive
El Paso, Texas 79936
(w/o enclosures)